



CITY OF AKRON, OHIO
POLICE DIVISION
JAMES D. NICE, CHIEF OF POLICE

NUMBER P-2015-013	EFFECTIVE DATE September 1, 2015	RESCINDS P-2014-013 Issued 04-07-2014
SUBJECT Resisting Arrest/Use of Force Procedure		ISSUING AUTHORITY Chief James D. Nice

I. POLICY

When dealing with an angry, agitated, or non-compliant subject, the objective is to utilize de-escalation techniques to calm the individual and obtain voluntary cooperation.

However, when officers must use physical force to defend themselves, to defend others, to effect an arrest or detention, to prevent escape, or to overcome resistance, such force shall meet the "objectively reasonable" standard.

II. DEFINITIONS

- A. De-escalation techniques – Both verbal and non-verbal techniques used to calm an agitated or otherwise non-compliant individual who has not become physically aggressive toward an officer or another.
- B. Force – Can be physical or nonphysical. Physical force is power exerted by an officer to control, subdue, or restrain another person. Nonphysical force is using an officer's presence or verbal commands to compel another person to do something, e.g. follow a lawful order.
- C. Reportable force – For purposes of this procedure, the following types of physical force require reporting and supervisory investigation: striking, kicking, tackling, taking a person to the ground forcefully, use of a chemical defense spray directly on a person, use of an electronic control device, when a K-9 has applied force to a person (see also P-2009-062 or most updated version), and whenever force of any type results in injury.
- D. Deadly force – Any force that carries a substantial risk that it will proximately result in the serious physical injury or death of any person.
- E. Serious physical injury – Injury that carries a substantial risk of death; or physical injury that results in permanent incapacity, partial or total serious disfigurement (whether permanent or temporary), or long-term acute pain or substantial suffering.
- F. Objectively reasonable force – Constitutionally appropriate level of force used by an officer against a person with regard to the imminent threat the person presents to the officer or others, the severity of the crime, and whether the person is actively resisting arrest or trying to escape. The court case, *Graham v. Connor*, 490 U.S. 386 (1989), established that, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...police

officers are often forced to make split-second judgments-in circumstances that are tense, uncertain and rapidly evolving...Force must be reasonable under the circumstances known to the officer at the time the force was used.”¹

Whether force is objectively reasonable is determined, in part, by considering whether a similarly trained officer facing similar circumstances would act in the same way or use similar judgment. An officer’s use of force will be judged upon the totality of the circumstances (i.e., facts known to the officer at the moment force was used) and without regard to underlying intent or motivation.

III. PROCEDURE

- A. Use of Deadly Force to Defend - An officer may use force, up to and including deadly force, to:
 - 1. Protect himself or herself from the threat of serious physical harm or death.
 - 2. Protect any person(s) in danger of serious physical harm or death.
- B. Use of Deadly Force against a fleeing felon - An officer may use force, up to and including deadly force, to apprehend or to prevent the escape of a violent fleeing felon when:
 - 1. The fleeing felon has threatened the officer with a weapon, or
 - 2. The officer has probable cause to believe the felon has committed a crime involving the infliction or threatened infliction of serious physical harm, and
 - 3. The use of deadly force is necessary to prevent the felon’s escape, and
 - 4. Where feasible, the officer gives a verbal warning of the imminent use of deadly force.²
- C. Use of Force to suppress a riot ³
 - 1. An officer is justified in using force, other than deadly force, when and to the extent he or she has probable cause to believe such force is necessary to disperse or apprehend rioters;
 - 2. An officer is justified in using force, including deadly force, when and to the extent he or she has probable cause to believe such force is necessary to disperse or apprehend rioters whose conduct is creating a substantial risk of serious physical harm to persons.
- D. Use of Force in general – An officer may use objectively reasonable force to:
 - 1. Protect himself or herself from the threat of physical harm.

¹ *Graham v. Connor*, 490 U.S. 386 (1989)

² [*Tennessee v. Garner* 471 U.S. 1 (1985)]

³ (O.R.C. 2917.05)

2. Protect any person(s) in danger of physical harm.
 3. To effect an arrest or detention against a subject who resists:
 - a. Resistive subjects can be threatening or non-threatening.
 - b. The amount of force that is reasonable will depend upon the subject's actions, and the level of threat he/she presents to the officer or others.
- E. Use of weapons – Officers have at their disposal a number of police weapons that are authorized such as chemical defense spray, batons, electronic control devices (Tasers), or firearms.
1. The use of weapons in the application of force must meet the objective reasonableness standard.
 2. In certain circumstances, an officer may be forced to use any item or object as a weapon of opportunity or convenience.
 - a. Examples of this include, but are not limited to, cases where an officer cannot access a police weapon because of positioning, lack of time, or the officer has dropped the weapon in a scuffle.
 - b. In such cases, officers are authorized to use such items as a nontraditional weapon, e.g., portable radio, flashlight, a rock, a stick.
 3. The use of chemical defense sprays and electronic control devices shall be in accordance with their respective procedures, P-2009-003 and P-2008-057, as well as this procedure.
- F. Factors used to determine reasonableness. When evaluating use of force incidents involving officers of the Akron Police Department, the following factors should be considered. These factors may include but are not limited to:
1. The seriousness of the crime or suspected offense.
 2. The level of threat or resistance presented by the subject.
 3. Whether the subject posed an immediate threat to the officers or a danger to the community.
 4. The potential for injury to citizens, officers, or the subject him/herself.
 5. The risk or apparent attempt by the subject to escape.
 6. The time available to an officer to make a decision.
 7. The availability of other resources.

8. The training and experience of the officer.
 9. The proximity or access of weapons to the subject.
 10. Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and the number of officers versus subject.
 11. Environmental factors or other exigent circumstances
- G. No duty to retreat - During certain encounters, an officer may choose to retreat in order to de-escalate the situation or to gain a better tactical advantage. However, there is no obligation for an officer to retreat when faced with a threat that may require the officer to use force upon the threatening person(s), i.e., an officer need not retreat simply to avoid using force.
- H. Duty to Intercede – Any officer who observes another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. Officers shall promptly report these observations to a supervisor.
- I. Shooting at or from moving vehicles
1. An officer shall not discharge firearms at a moving vehicle unless a person in the vehicle presents the officer or other person(s) with the immediate threat of deadly force other than the vehicle itself, e.g., a person in the car is shooting at the officer.
 - a. If the immediate threat of harm to an officer is the vehicle itself, then the officer shall make every attempt to move out of the path of the vehicle.
 - b. Any officer who discharges a firearm at a moving vehicle must be able to articulate that the life of the officer or the lives of others were in immediate danger and that danger outweighed the dangers presented by incapacitating the driver.
 2. An officer shall not discharge a firearm from a moving vehicle except in the immediate defense of life when there is no other reasonable alternative course of action.
- J. Prohibited Acts – Use of Force. Force will not be used:
1. As an investigative tool to threaten or attempt to gain information from a person.
 2. Against a person already in custody unless physical resistance must be overcome.
 3. As retaliation for physical or verbal abuse.
- K. Officer's Responsibilities
1. An officer shall notify his or her immediate supervisor as soon as practicable when:

- a. Any reportable force has been used against a person.
 - b. Any injury or alleged injury occurs to officers or civilians.
 - c. Any damage occurs to police or civilian property.
 - d. Any restraints, other than handcuffs, are necessary to subdue an individual, e.g., leg shackles.
 - e. Any subject is charged with resisting arrest.
 - f. Any time an officer feels it is necessary.
 - g. In the case of an off-duty incident, and the officer is unsure if the incident involved police action under the color of the law, the officer shall notify a supervisor.
2. Medical attention shall be provided when:
 - a. There is any visible injury that may require treatment.
 - b. The individual requests medical attention.
 - c. The individual is incapable of communicating his or her well-being.
 - d. The individual becomes unconscious at any time while in the officer's care and control.
 - e. The officer determines based on the circumstances that an individual should be treated.
 - f. As required by the Electronic Control Device Procedure.
3. The officers involved in the incident will make every attempt to locate and identify all witnesses to the incident and obtain contact information if a witness is unable to remain at the scene. This information shall be forwarded to the responding supervisor.
4. Complete all necessary paperwork.
 - a. All officers involved in a use of force/resisting arrest incident and all witness officers shall complete a Use of Force/Resisting Arrest report.
 - 1) Officers using force shall report their actions and details of all contributing factors such as those enumerated in Section III F of this procedure.
 - 2) Officers witnessing the incident shall report the actions they observed from their perspective, including any relevant contributing factors.
 - b. An incident report shall be completed regardless of whether there are accompanying criminal charges to aid in tracking.

- c. When there is damage to police or civilian property during a use of force/resisting arrest incident, officers shall complete a Lost/Damaged Property report.
- d. When there are accompanying criminal charges, officers must note either in the CAIR (for offenses not requiring a Report of Investigation) or the Report of Investigation that an investigative package exists to ensure the assigned prosecutor will be aware for discovery purposes.⁴

L. Investigating Supervisor's Responsibilities

1. Upon being notified/assigned, determine the appropriate response/follow-up:

- a. If an officer has used reportable force against a person, respond to the scene and complete an investigative package.
- b. If a person has been injured during any type of use of force/resisting arrest incident or is claiming injury (by an officer), respond to the scene and complete an investigative package.
- c. If damage to either civilian or police property has occurred during a use of force/resisting arrest incident, determine whether response to the scene is warranted, and if an investigation package is required based on the circumstances (e.g., type of force used, if any; whether there are injuries/alleged injuries; whether on scene officers have the means to photograph the damage).
- d. The circumstances surrounding the incident where a suspect has been charged with resisting arrest will determine whether or not the supervisor should respond to the scene. Some information to consider is the type of force used, if any; whether there are injuries/alleged injuries; whether on scene officers have the means to photograph the arrested person.
- e. Some situations may require a supervisor to use his/her best judgment when it comes to determining if a situation meets the definition of a reportable use of force or when it is in all parties' best interest to conduct an investigation. Nothing in this section shall preclude a supervisor from conducting an investigation when he/she believes it to be necessary.

2. Investigative Actions

- a. Once the scene is deemed safe, ensure that any injured persons have received medical attention.
- b. Locate/interview witnesses and the subject of the use of force/resisting arrest. Interviews shall be recorded unless valid circumstances exist, and those

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963)

circumstances shall be documented in the Supervisor's Resisting Arrest/Use of Force Checklist.

- c. Ensure photographs are taken:
 - 1) Of the scene. (This can be helpful for anyone who must review the incident but was not on scene.)
 - 2) Of any person(s) injured, alleging injury.
 - 3) Of any person arrested for resisting arrest and of any person on which force has been used regardless of whether the person was injured.
 - 4) Of any visible injuries sustained by officers.
 - 5) Of any damage to police or civilian property (ensure officers complete a Lost/Damaged Property report).
 - d. Determine whether any additional relevant information is available, e.g., radio traffic recordings, 911 calls, IVS, other videos, CAD notes, court records.
 - e. Ensure that no involved/witness officers participate in the investigative process other than the limited involvement specified in this procedure.
3. Notify the shift commander of use of force/resisting arrest incidents prior to the end of the shift. The shift commander will then document the incident on the Commander's Report for tracking purposes.
 - a. If the supervisor's shift commander is not working, he/she must ensure the incident is documented on the Commander's Report.
 - b. If a subject is hospitalized or dies as a result or probable result of police action, or while in police custody, an on duty shift commander shall be notified immediately.
 - 1) In the event of a death or serious injury to either the officer(s) involved or the suspect(s), the shift commander shall notify the Chief of Police, or designee.
 - 2) If a suspect is hospitalized with serious injuries or dies, and there is no on duty shift commander, an off duty shift commander shall be notified who shall then notify the Chief of Police, or his designee.
 4. Complete a Supervisor's Injury Package whenever an officer is injured.
 - a. Ensure officer injury reports and witness statements are completed.
 - b. Complete a Supervisor's Report of Injury.
 - c. Print four copies of all reports on green paper.

- d. The supervisor and the injured officer must sign all four copies with original signatures, i.e., no photocopied signatures.
 - e. Submit as soon as possible to the Services Subdivision assistant commander.
5. Investigative packages, if required, shall include:
- a. A Supervisor's Use of Force/Resisting Arrest Checklist that documents:
 - 1) All investigative actions.
 - 2) Any allegations made by witnesses/suspects and how resolved.
 - 3) An assessment of statements made by officers, witnesses, and suspects (e.g., comparing/contrasting the various statements, noting other information that supports or contradicts statements made). Nothing in this procedure precludes the investigating supervisor from interviewing involved officers/witness officers if deemed necessary (in accordance with Article VII of the Collective Bargaining Agreement).
 - 4) Any injuries/alleged injuries.
 - 5) Whether medical treatment was provided or refused.
 - 6) Whether the incident was captured on the IVS, including the use of the audio recording feature. If not, the reason must be noted.
 - 7) Assessment of contributing factors/circumstances in relation to objective reasonableness standard.
 - b. Any audio/video recordings, including IVS downloads.
 - c. Photographs.
 - d. CAD printout.
 - e. Officers' Use of Force/Resisting Arrest reports, Incident Reports, arrest paperwork, and any other relevant paperwork.
6. Forward the completed investigation to the shift/unit commander for review.
7. The shift commander will forward the completed package to the Patrol Operations Office within 30 days of the date of occurrence. If extenuating circumstances exist that prevent an investigative package from reaching the Patrol Operations Office within 30 days, an extension may be requested through the shift/unit commander to the Patrol Operations commander.

M. Investigative Package Review Process

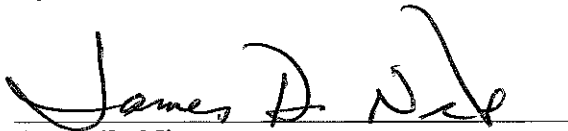
1. The shift/unit commander shall review the investigative package and ensure that it contains the required components.
2. The shift/unit commander shall then forward the investigative package to Patrol Operations for additional tracking purposes.
3. Patrol Operations shall then forward the investigative package to the Office of Professional Standards and Accountability for further review.
4. If an investigation is returned for additions or clarifications, the investigating supervisor will then have 14 days to address the issues and return the investigative package to Patrol Operations.

N. Additional considerations

1. In the event a Patrol officer's immediate supervisor is unavailable, a supervisor assigned to the officer's shift shall be assigned to respond to the scene, if supervisor response is required.
 - a. If no shift supervisors are available, an on duty Patrol supervisor shall be assigned to complete the preliminary investigation (e.g., witness statements, photos). That supervisor will then forward the results of the preliminary investigation to the shift commander of the involved officer for assignment and completion.
 - b. In all cases where a shift supervisor is unavailable, the shift's Commander's Report will indicate the reason why no shift supervisor responded.
2. In the event the incident involves Investigative or Services personnel and requires supervisor response to the scene, a Patrol supervisor will be dispatched and will initiate the investigation until a supervisor from the officer's unit responds to the scene.
 - a. If no supervisor is available from the officer's unit to respond in a reasonable amount of time, or if the assignment of a supervisor would jeopardize a police operation, the Patrol supervisor will be responsible for the preliminary investigation. That supervisor will then forward the results of the preliminary investigation to the unit commander of the involved officer for assignment and completion.
 - b. In all cases where an officer's unit supervisor is unavailable, the unit's Commander's Report will indicate the reason why no unit supervisor responded.
3. In the event a supervisor is involved in a use of force, a supervisor of higher rank shall be responsible for conducting the investigation.
 - a. Under no circumstance shall a direct subordinate of the supervisor conduct the investigation.

- b. If a supervisor of higher rank is not available, a supervisor of equal rank or a lower level, non-subordinate supervisor may conduct the preliminary investigation in the field. That supervisor will then forward the results of the preliminary investigation to a higher ranking supervisor in the involved supervisor's chain of command for completion.
 - c. Any supervisor involved in, or witness to, a use of force shall not conduct any part of the investigation with the exception of locating witnesses and obtaining contact information for any witness unable to remain at the scene.
4. Secondary Employment Incidents
- a. Shall be investigated by a supervisor working in a supervisory capacity for that secondary employer. If there is no supervisor working in that capacity at the secondary employment, or the supervisor was involved in or witnessed the incident then;
 - b. A supervisor working at the secondary employment in a nonsupervisory capacity shall conduct the investigation. If there is no supervisor working at the secondary employment, or the supervisor was involved in or witnessed the incident then;
 - c. The involved officer/supervisor shall contact the Communications Center and request that a supervisor respond to the scene (if supervisor response is required). An on duty Patrol supervisor will be dispatched and shall be responsible for completing an investigative package (unless Section III. M. 3. b. applies).
5. Off duty incidents shall be investigated by an on duty Patrol supervisor.
6. This procedure is not intended to be used as a standard of care in a negligence lawsuit, but rather it is intended to be used as a set of guidelines for the application and investigation of force for the sworn employees of the Akron Police Department.

By Order Of,



James D. Nice
Chief of Police

Date

8/7/15